

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RODNEY LAMONT REED,

Defendant-Appellant.

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UNPUBLISHED  
November 17, 2015

No. 323871  
St. Clair Circuit Court  
LC No. 14-001043-FH

Before: STEPHENS, P.J., and CAVANAGH and MURRAY, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of possession of less than 25 grams of cocaine, MCL 333.7403(2)(a)(v). Defendant was sentenced, as a fourth habitual offender, MCL 769.12, to 90 days in jail and two years' probation. We affirm.

I. BACKGROUND

On the evening of September 2, 2013, Michigan State Police Trooper Derek Hoffmann pulled over defendant's vehicle in Port Huron Township, Michigan. Trooper Hoffmann ordered defendant out of the vehicle for driving with a suspended license. Trooper Hoffmann noticed particles of crack cocaine on defendant's pants and vehicle seat while defendant was exiting the vehicle. Instead of taking defendant to jail, however, Trooper Hoffmann released defendant because defendant offered to cooperate as an informant. Yet, defendant ultimately proved to be an ineffective informant, and Trooper Hoffmann sought a warrant for defendant's arrest stemming from his possession of cocaine during the initial traffic stop.

At trial, defendant testified that he did not possess any crack cocaine during the traffic stop, and that he had made no deals with Trooper Hoffmann regarding being an informant. During her closing argument, the prosecutor stated to the jurors that "[t]his is a case where truly if you find the [d]efendant not guilty then you're calling Trooper Hoffmann a liar." Furthermore, on rebuttal argument, the prosecutor stated: "[Defendant] is being charged [with] possession of cocaine, and . . . you absolutely do have to find that the [t]rooper is lying because the defendant told you that he was never confronted with the fact that there was cocaine found in the vehicle." The jury found defendant guilty.

II. PROSECUTORIAL MISCONDUCT

Defendant contends that by telling the jurors during closing and rebuttal arguments that they must find Trooper Hoffmann a liar in order to find defendant not guilty, the prosecutor inappropriately vouched for Trooper Hoffmann's credibility. We disagree.

"In order to preserve an issue of prosecutorial misconduct, a defendant must contemporaneously object and request a curative instruction." *People v Bennett*, 290 Mich App 465, 475; 802 NW2d 627 (2010). Here, defense counsel did not object to the statements. Therefore, the issue is unpreserved for appellate review. See *id.*

Unpreserved claims of prosecutorial misconduct are reviewed for "plain error that affected [defendant's] substantial rights." *People v Thomas*, 260 Mich App 450, 453-454; 678 NW2d 631 (2004). Plain error analysis requires three findings: 1) error, 2) that is plain, 3) which affects substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). A plain error will generally affect substantial rights when there is a showing of prejudice—"that the error affected the outcome of the lower court proceedings." *Id.* Once the three findings for plain error are met, "[r]eversal is warranted only when the plain . . . error resulted in the conviction of an actually innocent defendant or when an error 'seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings independent of the defendant's innocence.'" *Id.* at 763-764, quoting *United States v Olano*, 507 US 725, 736-737; 113 S Ct 1770; 123 L Ed 2d 508 (1993) (quotation marks omitted).

To determine whether prosecutorial misconduct has occurred, we look to whether the defendant has received a fair and impartial trial. *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001). A prosecutor's statements during closing argument may amount to misconduct when the prosecution attempts to "vouch for the credibility of his or her witnesses." *Bennett*, 290 Mich App at 478. A prosecutor's statements may be considered "vouching" when the prosecutor conveys to the jury that she has personal or special knowledge regarding the witness's truthfulness. *Thomas*, 260 Mich App at 455. By vouching for the witness's credibility, the prosecutor effectively places her "stamp of approval" on the witness's credibility. *Bennett*, 290 Mich App at 479. However, while the prosecutor may not vouch for her witness, the prosecutor is "free to argue from the evidence and its reasonable inferences in support of a witness's credibility." *Id.* at 478. Furthermore, the prosecutor "may comment on his or her own witnesses' credibility, especially when credibility is at issue." *Id.*

Even if the prosecutor inappropriately vouches for a witness, plain error will not be found unless the error affected the defendant's substantial rights. *Carines*, 460 Mich at 763. The defendant's substantial rights are affected if "the [misconduct] affected the outcome of the lower court proceedings." *Id.* In determining whether misconduct had an outcome-determinative effect on the proceeding, we may consider whether the jury could have found the evidence against the defendant overwhelming despite the purported misconduct. See *id.* at 772. Furthermore, a judge's curative instructions are "presumed to cure most errors," and "jurors are presumed to follow their instructions . . . ." *People v Abraham*, 256 Mich App 265, 278-279; 662 NW2d 836 (2003).

The prosecutor's comments here did not constitute misconduct, and even if misconduct occurred, it did not affect defendant's substantial rights. The prosecutor did not engage in prosecutorial misconduct because her comments did not amount to an act of "vouching." The

prosecutor did not attempt to convey to the jurors personal knowledge regarding Trooper Hoffmann's credibility, *Thomas*, 260 Mich App at 455, nor did she place a "stamp of approval" on the witness's testimony, *Bennett*, 290 Mich App at 478.

This case clearly rested on witness credibility. The prosecutor opened her closing argument telling the jury that the case "boiled down to credibility" and that the jury was to decide which witness they should believe. A prosecutor is free to "argue from the evidence and its reasonable inferences in support of a witness's credibility" and to "comment on his or her own witnesses' credibility, especially when credibility is at issue." *Bennett*, 290 Mich App at 478. Because Trooper Hoffmann and defendant told completely different stories, and no other witnesses were presented to corroborate either story, the trial was essentially a credibility contest, requiring the jury to determine which witness was more credible. Accordingly, the prosecutor acted appropriately because "credibility [was] at issue." *Id.*

Affirmed.

/s/ Cynthia Diane Stephens  
/s/ Mark J. Cavanagh  
/s/ Christopher M. Murray